

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JIMMIE OLIVER BEASLEY JR.,  
*Petitioner.*

No. 2 CA-CR 2016-0183-PR  
Filed August 11, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Pima County  
No. CR036565  
The Honorable D. Douglas Metcalf, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

David Goldberg, Fort Collins, Colorado  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

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H O W A R D, Presiding Judge:

¶1 Jimmie Beasley Jr. seeks review of the trial court's order summarily denying his untimely and successive notice of and petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Beasley has not met his burden of demonstrating such abuse here.

¶2 In 1992, Beasley pled guilty to attempted child molestation and sexual conduct with a minor under the age of fourteen. The trial court sentenced him to consecutive prison terms totaling forty years. Beasley appealed and sought post-conviction relief; we consolidated his appeal with his petition seeking review of the court's denial of post-conviction relief, affirming his convictions and sentences and denying relief on review. *State v. Beasley*, Nos. 2 CA-CR 92-0529, 2 CA-CR 93-0089-PR (Ariz. App. Dec. 21, 1993) (consol. mem. decision). Beasley has sought post-conviction relief on at least five previous occasions; he sought, and we denied, relief on review in four of those proceedings. *State v. Beasley*, No. 2 CA-CR 2012-0017-PR (Ariz. App. May 2, 2012) (mem. decision); *State v. Beasley*, No. 2 CA-CR 2009-0217-PR (Ariz. App. Nov. 18, 2009) (mem. decision); *State v. Beasley*, No. 2 CA-CR 2005-0186-PR (Ariz. App. Mar. 15, 2006) (decision order); *State v. Beasley*, No. 2 CA-CR 2002-0291-PR (Ariz. App. Sep. 19, 2003) (mem. decision).

¶3 In February 2016, through retained counsel, Beasley filed a notice of and petition for post-conviction relief arguing his trial counsel had been ineffective in relation to his guilty plea and his first post-conviction counsel was ineffective for failing to

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adequately raise that claim. He asserted that those claims, which he had raised in several of his previous proceedings, could nonetheless be reviewed on their merits because the courts in those proceedings had been incorrect in finding the claims precluded because he had not waived them and they were exempt from preclusion pursuant to *State v. Bennett*, 213 Ariz. 562, 146 P.3d 63 (2006). The trial court summarily denied relief, finding all of the claims precluded, and this petition for review followed.

¶4 On review, Beasley repeats his argument that the trial courts and this court erred in finding his claims precluded in previous proceedings and that his claims are not subject to preclusion because he did not knowingly and voluntarily waive them, citing *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002). We need not address Beasley's arguments relating to preclusion, however, because this proceeding is patently untimely. See Ariz. R. Crim. P. 32.4(a). Thus, he is only permitted to raise claims falling within Rule 32.1(d) through (h), irrespective of waiver. See *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014) (waiver principles discussed in *Stewart* inapplicable to untimely proceedings). He has identified no claim exempt from the timeliness requirement of Rule 32.4(a) in his notice or petition below, or in this petition for review.

¶5 Beasley suggests, however, that he is entitled to now raise these claims because he could not have raised them until after our supreme court issued *Bennett* in 2006, and because he was not entitled to counsel until our decision in *Osterkamp v. Browning*, 226 Ariz. 485, 250 P.3d 551 (App. 2011).<sup>1</sup> Even assuming Beasley is

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<sup>1</sup>In *Bennett*, our supreme court determined that a defendant was not precluded by Rule 32.2(a)(3) from raising a claim of ineffective assistance of appellate counsel in a second, timely post-conviction proceeding if he or she had been represented by the same attorney on appeal and in the defendant's first post-conviction proceeding. 213 Ariz. 562, ¶ 16, 146 P.3d at 68. In *Osterkamp*, this court determined that a pleading defendant was entitled to counsel to raise a claim of ineffective assistance of first Rule 32 counsel. 226 Ariz. 485, ¶¶ 19-20, 250 P.3d at 556-57.

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correct that his claims were not fully cognizable before those decisions, he has not raised a claim pursuant to Rule 32.1(d) through (h), and the trial court was required to summarily dismiss the proceeding. *See* Ariz. R. Crim. P. 32.4(a).

¶6 Beasley also argues he is entitled to review of his claims pursuant to *State v. Diaz*, 236 Ariz. 361, 340 P.3d 1069 (2014). In *Diaz*, the court determined a defendant whose counsel had failed to file a petition in two previous Rule 32 proceedings was entitled to raise a claim of ineffective assistance of counsel in a third proceeding. 236 Ariz. 361, ¶¶ 3-4, 11, 13, 340 P.3d at 1070-71. That case has no application here. Beasley has sought post-conviction relief on numerous occasions; he is not entitled to review of his untimely petition for post-conviction relief merely because he has identified claims he believes his previous counsel should have raised or that he believes were wrongfully rejected in previous proceedings.

¶7 We grant review but deny relief.